UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE PRINCERIDGE GROUP LLC, Plaintiffs, -against- OPPIDAN, INC., Defendant.	11-CV-1460(AJN)

DEFENDANT OPPIDAN, INC.'S RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL FACTS IN REPLY TO PLAINTIFF AND IN FURTHER SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendant, OPPIDAN, INC., by and through their attorneys, WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, in compliance with Local Civil Rule 56.1, hereby submit the following statement of undisputed material facts in reply and in further support of its motion for summary judgment:

Reply to Plaintiff's Response No. 4:

Disputed. The testimony of PrinceRidge confirms that The Letter of Intent was drafted by PrinceRidge with the assistance of its counsel. Tonorezos Decl. ¶ 5, "M. Kirsch Dep."; at 95:13-19.

Reply to Plaintiff's Response No. 5:

Disputed. The testimony of PrinceRidge confirms that The Letter of Intent was drafted by PrinceRidge with the assistance of its counsel. Tonorezos Decl. ¶ 5, "M. Kirsch Dep."; at 95:13-19.

Reply to Plaintiff's Response No. 7:

Disputed. The Contract provides for "1. Sale of an 16-property portfolio… List of properties attached." Tonorezos Decl. ¶ 3, Introduction and ¶1.

Reply to Plaintiff's Response No. 9:

Disputed. The Contract reads that Compensation was to be paid at closing, in an amount equal to 1.875% of the sales price. Tonorezos Decl. ¶ 3, Compensation ¶3. The only compensation mentioned is directly related to the properties.

Reply to Plaintiff's Response No. 10:

Disputed. Plaintiff mischaracterizes the "success fee". The Contract reads that Compensation was to be paid at closing, in an amount equal to 1.875% of the sales price (a percentage of the sales price of the real property to be paid at closing of the real property). Tonorezos Decl. ¶ 3, Compensation ¶3.

Reply to Plaintiff's Response No. 15:

Disputed. Plaintiff cannot change the testimony through use of a declaration. Mr. Kirsch testified that PrinceRidge's sole service was to act as the exclusive advisor in connection with the sale of the 16 Oppidan properties. Tonorezos Decl. ¶ 5, "M. Kirsch Dep."; at 102:18-22.

Reply to Plaintiff's Response No. 16:

Disputed. The Contract provides for "1. Sale of an 16-property portfolio… List of properties attached." Tonorezos Decl. ¶ 3, Introduction and ¶1. PrinceRidge's primary objective was to sell the properties. Tonorezos Decl. ¶ 5, "M. Kirsch Dep."; at 134:15-25, 135:2-15.

Reply to Plaintiff's Response No. 19:

Disputed. PrinceRidge represented Oppidan to sell the properties. The Contract provides for "1. Sale of an 16-property portfolio… List of properties attached." Tonorezos Decl. ¶ 5, Introduction and ¶1. PrinceRidge's primary objective was to sell the properties. Tonorezos Decl. ¶ 5, "M. Kirsch Dep."; at 134:15-25, 135:2-15.

Reply to Plaintiff's Response No. 20:

Disputed. PrinceRidge's marketing materials that it sent to potential purchasers set forth "Potential buyers may submit bids on the entire portfolio, subsets of the portfolio, or individual assets. Initial bids are due June 25th. Please contact Matthew Kirsch or Nic Anderson to discuss this portfolio acquisition opportunity." Matthew Kirsch is listed as Managing Director of PrinceRidge and Nic Anderson is listed as Associate Director of PrinceRidge. Tonorezos Decl. ¶ 6, Timing and Contact Information.

Reply to Plaintiff's Response No. 23:

Disputed. Plaintiff cannot change the testimony through use of a declaration. Mr. Kirsch testified that PrinceRidge's sole service was to act as the exclusive advisor in connection with the sale of the 16 Oppidan properties. Tonorezos Decl. ¶ 5, "M. Kirsch Dep."; at 102:18-22.

Reply to Plaintiff's Response No. 32:

Disputed. Plaintiff's response mislabels its services as it objects to the term "list". However, PrinceRidge does not challenge that it caused the dissemination of the availability of the properties for sale beginning in May 2010. PrinceRidge cannot challenge that undisputed fact as internal email communications leave no question PrinceRidge was alerting various real estate entities regarding the Properties. Tonorezos Decl. ¶ 7, emails dated May 3, 2010 by and between PrinceRidge – M. Kirsch and T. Connors.

Reply to Plaintiff's Response No. 33:

Disputed. Defendant objects to plaintiff's characterization of its services as "not a broker for the sale of the properties", not only on the grounds that this is factually unsupported by the evidence, but also a legal argument inappropriate for a 56.1 statement.

Reply to Plaintiff's Response No. 35:

Disputed. PrinceRidge's objection is contradicted by PrinceRidge's internal communications. The internal discussions of PrinceRidge addressed the listing of the properties with numerous various national real estate outlets. Tonorezos Decl. ¶ 7, emails dated May 3, 2010 by and between PrinceRidge – M. Kirsch and T. Connors.

Reply to Plaintiff's Response No. 36:

Disputed. Defendant objects to plaintiff's unilateral definition of the term "listing", not only on the grounds that this is factually unsupported by the evidence, but also a legal argument inappropriate for a 56.1 statement.

Reply to Plaintiff's Response No. 38:

Disputed. Defendant objects on the grounds that plaintiff's objection is unsupported by the evidence.

Reply to Plaintiff's Response No. 39:

Disputed. Defendant objects on the grounds that plaintiff's objection is unsupported by the evidence. Tom Connors testified that he worked with Matthew Kirsch to find buyers for the properties. Tonorezos Decl. ¶ 4, "T. Connors Dep."; at 33:14-15.

Reply to Plaintiff's Response No. 40:

Disputed. Defendant objects on the grounds that plaintiff's objection is unsupported by the evidence.

Reply to Plaintiff's Response No. 41:

Disputed. Defendant objects on the grounds that plaintiff's objection is unsupported by the evidence.

Reply to Plaintiff's Response No. 42:

Disputed. Defendant objects on the grounds that plaintiff's objection is unsupported by the evidence. PrinceRidge's marketing materials that it sent to potential purchasers set forth "Potential buyers may submit bids on the entire portfolio, subsets of the portfolio, or individual assets. Initial bids are due June 25th. Please contact Matthew Kirsch or Nic Anderson to discuss this portfolio acquisition opportunity." Matthew Kirsch is listed as Managing Director of PrinceRidge and Nic Anderson is listed as Associate Director of PrinceRidge. Tonorezos Decl. ¶ 6, Timing and Contact Information.

Response to Plaintiff's Statement of Additional Material Facts:

Response to Plaintiff's No. 1:

Disputed insofar as it may be inferred that PrinceRidge's FINRA registration provided PrinceRidge with a license to sell real property. Objection insofar as FINRA is not applicable to this action and therefore, the statement is no relevant to any facts in dispute or the motion for summary judgment.

Response to Plaintiff's No. 2:

Disputed insofar as it may be inferred that PrinceRidge introduced Oppidan to NRP.

Response to Plaintiff's No. 3:

Undisputed.

Response to Plaintiff's No. 4:

Disputed. Disputed insofar as the "discussion materials" was a "pitch book". As part of his sales efforts, Mr. Kirsch had prepared a "pitch book" for distribution to "potential buyers". Tonorezos Decl. ¶ 5, "M. Kirsch Dep." at 106:18-22. Mr. Kirsch's "pitch book contained [. . .] [the] salient points that a potential purchaser of the Portfolio might be interested in." Tonorezos Decl. ¶ 5, "M. Kirsch Dep." at 108:10-14. He presented his pitch book to the "investment banking world so that they [would] participate in [his] opportunity" to "purchase" the Portfolio. Tonorezos Decl. ¶ 5, "M. Kirsch Dep." at 111:5-20.

Response to Plaintiff's No. 5:

Undisputed.

Response to Plaintiff's No. 6:

Undisputed.

Response to Plaintiff's No. 7:

Undisputed.

Response to Plaintiff's No. 8:

Undisputed.

Response to Plaintiff's No. 9:

Undisputed.

Response to Plaintiff's No. 10:

Undisputed.

Response to Plaintiff's No. 11:

Undisputed.

Response to Plaintiff's No. 12:

Undisputed.

Response to Plaintiff's No. 13:

Undisputed.

Response to Plaintiff's No. 14:

Undisputed.

Response to Plaintiff's No. 15:

Undisputed.

Response to Plaintiff's No. 16:

Undisputed.

Response to Plaintiff's No. 17:

Undisputed.

Response to Plaintiff's No. 18:

Disputed. PrinceRidge as not due a "Success Fee in accordance with the Exclusive Engagement Agreement". Oppidan did not pay PrinceRidge because PrinceRidge "didn't do their job". PrinceRidge was "to broker deals [with] entities [. . .] beyond [Oppidan's] reach" and the failed to do so. Tonorezos Decl. ¶ 8, "J. Ryan Dep."; at 133:23-25. They promised to "introduce [Oppidan] to new clients" which they did not do. Tonorezos Decl. ¶ 8, "J. Ryan Dep."; at 134:1-2.

CONCLUSION

For the reasons set forth above and in the accompanying Memorandum of Law, it is respectfully submitted that the foregoing undisputed material facts warrant that the defendant Oppidan, Inc.'s motion pursuant to Rule 56 of the Federal Rules of Civil Procedure be granted in its entirety and that an Order be issued dismissing plaintiff's complaint in its entirety.

Dated: White Plains, New York
April 15, 2013

Yours, etc.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: ______________________

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